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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44413
)	
v.)	PAYETTE COUNTY NO. CR 2015-619
)	
DAKOTA J. SMITH,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

After Dakota J. Smith admitted to violating his probation, the district court revoked his probation and executed his underlying sentence of seven years, with three years fixed. Mr. Smith then filed a motion pursuant to Idaho Criminal Rule 35 ("Rule 35"), requesting the district court reduce his sentence or retain jurisdiction. The district court granted his motion in part. Mr. Smith appeals.

Statement of Facts and Course of Proceedings

In May of 2011, Mr. Smith pled guilty to a charge of grand theft, in violation of I.C. §§ 18-2403(1), -2407(1)(b).¹ (R., pp.33–38, 63.) Mr. Smith had stolen some welder tools, welder leads, aluminum wheels, and other miscellaneous tools. (R., pp.8–9.) The district court sentenced Mr. Smith to seven years, with three years fixed, suspended execution of his sentence, and placed him on probation. (R., pp.63–66.)

In November of 2011, Mr. Smith admitted to violating his probation. (R., pp.116–19, 249–50.) The district court revoked Mr. Smith’s probation, executed his sentence, and retained jurisdiction (a “rider”). (R., pp.129–30, 250.) After Mr. Smith successfully completed the rider, the district court reinstated his probation. (R., pp.138–41, 250.) Then, in September of 2013, Mr. Smith again admitted to violating his probation. (R., pp.145, 250.) The district court reinstated his probation with the additional condition that Mr. Smith complete the Tri-County Drug Court Program. (R., pp.170–71, 250.) Mr. Smith successfully completed the program. (R., p.250.) He was reinstated on probation in late April of 2015. (R., pp.172–74, 250.) In December of 2015, Mr. Smith admitted to violating his probation for a third time. (R., p.197.) The district court reinstated Mr. Smith’s probation with additional conditions and extended it for two years. (R., pp.199–200, 201–02, 250.)

In May of 2016, the State filed another motion to revoke Mr. Smith’s probation. (R., pp.209, 212–13.) Mr. Smith admitted to violating his probation for failing to report to his supervising officer in May of 2016, using methamphetamine, and failing to report to

¹ This case originally arose out of Canyon County, CR 2011-2445. (See, e.g., R., p.6.) In October of 2013, this case was transferred to Payette County due to Mr. Smith’s acceptance into the Tri-County Drug Court Program. (R., pp.162–64.)

drug court. (Tr., p.6, L.6–p.7, L.7, p.7, L.17–p.9, L.14.) In June of 2016, the district court held a disposition hearing. (See *generally* Tr., p.14, L.1–p.21, L.22.) The district court revoked Mr. Smith’s probation and executed his sentence of seven years, with three years fixed. (Tr., p.20, L.25–p.21, L.3.)

On July 5, 2016, Mr. Smith filed a premature Rule 35 motion for a reduction in his sentence. (R., pp.234–35.) On July 6, 2016, the district court issued a Judgment and Commitment on Probation Violation. (R., pp.231–32.) On July 12, 2016, Mr. Smith filed a first amended Rule 35 motion requesting a reduction in his sentence to two years, with one year fixed, or another rider. (R., pp.236–37.) On August 8, 2016, Mr. Smith filed a timely Notice of Appeal. (R., pp.241–45.) One month later, the district court granted Mr. Smith’s Rule 35 motion in part. (R., pp.249–53.) The district court declined to retain jurisdiction, but reduced the fixed portion of Mr. Smith’s sentence by six months, for a total sentence of six and one-half years, with two and one-half years fixed. (R., p.253.)

ISSUES

- I. Did the district court abuse its discretion when it revoked Mr. Smith’s probation and executed his underlying sentence of seven years, with three years fixed?
- II. Did the district court abuse its discretion when it granted in part and denied in part Mr. Smith’s Rule 35 motion?

ARGUMENT

I.

The District Court Abused Its Discretion When It Revoked Mr. Smith's Probation And Executed His Underlying Sentence Of Seven Years, With Three Years Fixed

The district court is empowered by statute to revoke a defendant's probation under certain circumstances. I.C. §§ 19-2602, -2603, 20-222. The Court uses a two-step analysis to review a probation revocation proceeding. *State v. Sanchez*, 149 Idaho 102, 105 (2009). First, the Court determines "whether the defendant violated the terms of his probation." *Id.* Second, "[i]f it is determined that the defendant has in fact violated the terms of his probation," the Court examines "what should be the consequences of that violation." *Id.* The determination of a probation violation and the determination of the consequences, if any, are separate analyses. *Id.*

Here, Mr. Smith does not challenge his admissions to violating his probation. (See Tr., p.6, L.6–p.7, L.7, p.7, L.17–p.9, L.14.) "When a probationer admits to a direct violation of her probation agreement, no further inquiry into the question is required." *State v. Peterson*, 123 Idaho 49, 50 (Ct. App. 1992). Rather, Mr. Smith submits the district court abused its discretion by revoking his probation.

"After a probation violation has been proven, the decision to revoke probation and pronounce sentence lies within the sound discretion of the trial court." *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987). "A judge cannot revoke probation arbitrarily," however. *State v. Lee*, 116 Idaho 38, 40 (Ct. App. 1989). "The purpose of probation is to give the defendant an opportunity to be rehabilitated under proper control and supervision." *State v. Mummert*, 98 Idaho 452, 454 (1977). "In determining whether to revoke probation a court must consider whether probation is meeting the objective of

rehabilitation while also providing adequate protection for society.” *State v. Upton*, 127 Idaho 274, 275 (Ct. App. 1995). The court may consider the defendant’s conduct before and during probation. *State v. Roy*, 113 Idaho 388, 392 (Ct. App. 1987).

In this case, Mr. Smith submits the district court abused its discretion by revoking his probation because his probation was achieving its rehabilitative objective while also providing adequate protection for society. Although Mr. Smith sometimes struggled on his path to recovery from his drug addiction, he was not violent or harming others. Mr. Smith began using methamphetamine at age fourteen. (Presentence Investigation Report (“PSI”),² p.12.) In the most recent PSI, he identified his recovery from substance abuse as the most important aspect of his life, along with his family. (PSI, p.14.) He acknowledged that the Tri-County Drug Court Program “saved [his] life by showing [him] how beautiful life is sober.” (PSI, p.14.) Similarly, at the disposition hearing, Mr. Smith accepted responsibility for his relapse. (Tr., p.19, L.23–p.20, L.2.) He recognized that his recovery would be a lifelong battle. (Tr., p.20, Ls.3–6.) His attorney also informed the district court that Mr. Smith was seeking out treatment. (Tr., p.15, Ls.21–22.) Therefore, the mere fact that Mr. Smith relapsed, without causing any harm to others, does not justify a prison sentence. To be sure, incarcerating Mr. Smith would likely prevent another relapse, but it does nothing to help him become a productive, contributing member of society. The district court should have reinstated Mr. Smith’s probation to give him another chance to treat and manage his substance abuse issues.

Moreover, despite his substance abuse issues, Mr. Smith has made significant progress since being placed on probation in 2011. He has maintained employment.

² Citations to the PSI refer to the fifty-one page electronic document containing the confidential exhibits.

(PSI, pp.12, 51.) In 2012, he completed his GED. (PSI, p.40.) In January of 2016, Mr. Smith enrolled in community college courses. (PSI, p.44.) In addition, Mr. Smith has attended numerous AA/NA meetings and other recovery programs. (PSI, pp.20, 42; Tr., p.6, L.18–p.7, L.8 (withdrawn alleged violation for failure to attend recovery programs), p.15, Ls.21–22 (seeking treatment at Lifeways).) Finally, Mr. Smith appears to have the support of his family. His girlfriend wrote a letter of support in the most recent PSI. (PSI, pp.36–37.) She was confident he would succeed on probation. (PSI, p.37.) Mr. Smith’s sister also described his “strong will to succeed.” (PSI, p.39.) She wrote that Mr. Smith accepted responsibility for his actions. (PSI, p.39.) Another letter of support wrote that Mr. Smith was determined to overcome his drug addiction. (PSI, p.38.) Mr. Smith’s mother also wrote a letter of support. (PSI, pp.47–49.) These letters of support and good character, as well as Mr. Smith’s ability to obtain employment and seek out treatment, show his probation was meeting the objective of rehabilitation.

In light of Mr. Smith’s progress on probation and his substance abuse issues, Mr. Smith submits the district court’s decision to execute imposition of his sentence of seven years, with three years fixed, was an abuse of discretion. He asserts the district court should have continued him on probation or retained jurisdiction.

II.

The District Court Abused Its Discretion When It Granted In Part And Denied In Part Mr. Smith’s Rule 35 Motion

A defendant may file a Rule 35 motion within fourteen days of the district court’s order revoking probation. I.C.R. 35(b). “A Rule 35 motion for reduction of sentence is essentially a plea for leniency, addressed to the sound discretion of the court.” *State v.*

Carter, 157 Idaho 900, 903 (Ct. App. 2014). In reviewing the grant or denial of a Rule 35 motion, the Court must “consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence.” *Id.* The Court “conduct[s] an independent review of the record, having regard for the nature of the offense, the character of the offender and the protection of the public interest.” *State v. Burdett*, 134 Idaho 271, 276 (Ct. App. 2000). When reviewing a sentence imposed following a probation revocation, the Court considers the “entire record encompassing events before and after the original judgment.” *State v. Hanington*, 148 Idaho 26, 28 (2009).

Here, Mr. Smith asserts the district court abused its discretion by failing to further reduce his sentence to two years, with one year fixed, or retain jurisdiction, which was recommended by his probation officer. (R., pp.236–37.) Mr. Smith’s seven-year sentence for grand theft was imposed in 2011 and had “not been revisited since.” (R., p.236.) Since 2011, Mr. Smith informed the district court that he “has completed significant rehabilitation programs successfully and the violation was the result of a relapse by [Mr. Smith], who is an acknowledged addict and his actions have not harmed any other persons or created any further victims. [He] acknowledged his relapse and accepted responsibility for it.” (R., p.236.) In addition, Mr. Smith noted that, since 2011, he has “maintained solid employment and maintained a home for his minor children. Both of these achievements will be irretrievably lost, to the detriment of both his family and himself, if the sentence of imposition stands.” (R., pp.236–37.) This information was not available to the district court when it sentenced Mr. Smith in 2011 and warranted a significant reduction in Mr. Smith’s sentence or another rider. In light of this information,

the district court abused its discretion by reducing Mr. Smith's sentence by only six months.

CONCLUSION

Mr. Smith respectfully requests that this Court reduce his sentence as it deems appropriate or, in the alternative, vacate the district court's probation revocation order and remand this case for a new disposition hearing. Alternatively, he respectfully requests that this Court vacate the district court's order on his Rule 35 motion and remand this case to the district court with instructions to further reduce his sentence or retain jurisdiction.

DATED this 23rd day of February, 2017.

_____/s/_____
JENNY C. SWINFORD
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of February, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

DAKOTA J SMITH
INMATE #100358
ISCC
PO BOX 70010
BOISE ID 83707

SUSAN E WIEBE
DISTRICT COURT JUDGE
E-MAILED BRIEF

KELLY WHITING
CONTRACT PUBLIC DEFENDER
E-MAILED BRIEF

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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JCS/eas